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ABSTRACT

Increasingly, high school students are getting married, or pregnant, or both. School authorities are thus faced with an increasing number of decisions as to what action, if any, to take when such a marriage or pregnancy becomes known to them. This paper discusses the status of legislation on pregnant students' rights according to (1) Mississippi statutory law, (2) statutory law in five other States, (3) major cases that have been in Mississippi courts, (4) the status of the case law on the subject elsewhere, (5) model legislation that has been proposed or recommendations for legislative action proposed by various agencies, and provides (6) recommendations developed on the basis of the material presented in the paper. (Author)

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PREGNANT STUDENTS' RIGHTS IN MISSISSIPPI

by

Jerry H. Robbins, Ed.D.

This paper is one of a series sponsored by the Governor's Office of Education and Training. Special thanks must go to Governor William Waller and Dr. Milton Baxter, Executive Director of the Governor's Office of Education and Training, for providing the support for the research and writing that have gone into these papers.

Each of the papers in this series is designed to speak to the following questions: (1) What is the statutory law in Mississippi on the subject, if any? (2) What is the statutory law in approximately five other states on the same subject? (3) What major cases, if any, have been in courts in Mississippi? (4) In very general terms, what is the status of the case law on the subject elsewhere? (5) What model legislation, if any, has been proposed or what recommendations for legislative action, if any, have been proposed by various agencies? (6) What recommendations seem to follow from the information presented in the answers to questions 1-5?

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Increasingly, high school students are getting married or pregnant or both. School authorities are thus faced with an increasing number of decisions as to what action, if any, to take when such a marriage or pregnancy becomes known to them.

Many schools, both in Mississippi and elsewhere, have formal or informal policies requiring a student who is married or pregnant or both to drop out of school. The student must drop out either at the time the marriage or pregnancy becomes known or at some specified point thereafter, such as at the end of a semester or at a certain point in the pregnancy.

A girl dismissed because of pregnancy will probably miss a complete year of school. Moreover, after having a child the onus of motherhood will probably prevent her returning to school. Considering these factors, an early dismissal because of pregnancy may cause serious educational loss. (1)

Statutory Law

Mississippi. The Mississippi law provides that

> It shall be the duty of each superintendent, principal and teacher in the public schools of this state to. . . hold the pupils to strict account for disorderly conduct at school, on the way to and from school, on the playgrounds, or during recess, and the superintendent of the district or principal of the school may suspend any pupil

> from school for good cause, but such suspension shall be reported to the board of trustees of the school district for review. (2)

Thus, a suspension from school for pregnancy in Mississippi would have to fall under the "good cause" provision, and the question of pregnant students' rights to attend school and under what conditions, if any, would depend on whether such pregnancy is a "good cause" for exclusion from school.

Idaho. Idaho is one of the very few states that deal with pregnant students in the law. The Idaho law reads:

> Every public school district in this state within which is located a state licensed or state sponsored system of care for expectant or delivered mothers shall provide, subject to rules and regulations of the state board of education, instruction in accredited courses, by a qualified instructor, for expectant and delivered mothers under twenty-one (21) years of age, who are enrolled for care by such systems of care, and shall, upon satisfactory completion of required public school courses or correspondence courses from a state institution of higher learning in Idaho, issue credits or a diploma evidencing such achievement. (3)

Other. The statutes in other states are rarely more specific on student dismissals because of pregnancy than the one in Mississippi. An exception appears to be in Maryland, where the law says a pregnant student cannot be excluded from the educational program. In Maryland the school district will arrive at an "appropriate educational program" for each girl on the basis of "joint consultation with the girl, her parents and/or husband, appropriate school personnel, and her physician." (4)

In Michigan, the state department of education adopted new rules governing pregnant students in June, 1971, saying, in part,

> A pregnant girl under the compulsory school age may

> withdraw from a regular public school program when her parents or legal guardian submits a signed request for the withdrawal and a certificate by a physician. . . that such girl is pregnant and that continued attendance in school may adversely affect her health or that of her child. School authorities or other school personnel shall not order a pregnant girl against her will, nor coerce her, to withdraw from a regular school program. (5)

Case Law in Mississippi

At least two cases involving exclusion from school of unwed mothers by school districts in Mississippi have been litigated in federal district court.

Perry v Grenada Municipal Separate School District. 300 F. Supp. 748 (Mississippi, 1969). Clydie Marie Perry and Emma Jean Wilson, residents of Grenada County, brought action against the Grenada Special Municipal Separate School District to attack the school board's policy of denying admission to unwed mothers. The question before the court was whether the policy of the school board in excluding unwed mothers violated the Due Process Clause or the Equal Protection Clause of the 14th Amendment to the Constitution. The court, recognizing the importance of education, held that the students could not be excluded solely because they were unwed mothers. For such an exclusion to stand, it must be shown at a fair hearing of the school board that the students were so lacking in moral character that "their presence in school will taint the education of others."

Schull v Columbus Municipal Separate School District. 338 F. Supp. 1376 (Mississippi, 1972). Action was filed by the parents of Desiree Schull on her behalf against the board of the Columbus Municipal Separate School District challenging the board's policy

of excluding unwed mothers from the schools of the district. The court found that the board did not charge the student with misconduct other than that she was an unwed mother. The court entered an order restraining the board from excluding Desiree Schull from attending school inasmuch as such action was unconstitutional and violated the equal protection clause of the 14th Amendment.

Under these recent rulings the school authorities of Mississippi must supply the student with written specifications of charges constituting moral unfitness. The school authorities cannot continue to exclude the student without a hearing on the charges. (6)

Case Law Elsewhere

A few of the numerous cases concerning pregnant students will be presented in this section.

Nutt v Board of Education of City of Goodland, Sherman County, 278 P. 1065 (Kansas, 1929). In 1929, the board of education of Goodland, Kansas, denied Dorothy Mitchell admission to high school on the grounds that she had a child conceived out of wedlock. The court noted that a student could be refused admission on the basis of immoral character but, as this was not the case in this instance, the court ordered that she be permitted to attend school.

State ex rel. Idle v Chamberlain, 75 NE 2d 539 (Ohio, 1961). A regulation of a board of education in Ohio requiring pregnant students to withdraw immediately upon knowledge of pregnancy did not constitute an arbitrary action, according to the ruling of a

court in 1961. Such a regulation was, instead, a "wise and proper exercise of discretion" to safeguard and protect the pregnant student's physical condition and well-being from the "typical rough-and-tumble characteristic of children in high school," with no motivation from a desire to punish the student. The court in this case also said that it would not force the board to adopt the Ohio Attorney General's suggestion that the board's power was limited to adoption of a rule which would prohibit a student in an advanced stage of pregnancy from attending regular classes. It was felt by the court that the Attorney General's suggestion would infringe on the right of the board to make its own determination based on its discretion. The question was actually moot, however, as the student received full credit for her subjects, though she was away from school, because she had the daily assignments and did the work.

Alvin Independent School District v Cooper, 404 S.W. 2d 76 (Texas, 1966). The school board of Alvin, Texas, adopted a rule which excluded married mothers from attending school. Under the board's rule the married mother was encouraged to continue her education under an adult education program, but to get into the program one must be 21 years old. The court held that the board did not have the authority to adopt such a rule where the student was in fact of an age for which the state furnished school funds.

Ordway v Hargraves. 323 F. Supp. 1155 (Massachusetts, 1971). An unmarried pregnant high school student in Massachusetts was prohibited from attending regular classes, but she was given

individual tutoring. However, she was permitted to attend all other school functions, to use school facilities, and to graduate with her class. The federal district court ordered her readmitted to classes on the basis that the school had not shown that classroom attendance would endanger her physical or mental health, cause a disruption or pose a threat to others, or was justified by any other valid educational reason. The court also noted that married pregnant high school students in that district were not restricted from class attendance. The court held that the burden of justifying the rule was on the school authorities, as the rule had the effect of limiting the right to an education.

Cases involving married students and student activities. A number of cases have been concerned with the rights of married students to participate in student activities. These cases have rarely, if ever, been concerned with pregnant students, but some of the reasoning may apply. In general, courts have upheld regulations by school boards and athletic associations which restrict activities of married students. In ruling on these regulations, the courts have expressed their reluctance to interfere with the discretion of school boards as long as the school boards were not arbitrary. Rules by athletic associations setting reasonable restrictions on rights of participation have also been upheld. The Fifth Circuit Court of Appeals, in a Louisiana case, ruled that the "privilege" of participation in interscholastic activities was not protected by due process but was left to state protection. (7)

However, a more liberal trend in the case law toward participation of married students (and possible pregnant students)

may be emerging. In a recent case in Indiana the court refused to hold that the right to participate in interscholastic athletics was constitutionally protected. Instead, the court held that even if the right was not of constitutional stature, its deprivation might constitute a denial of equal protection. The court issued an injunction against the state athletic association to prevent exclusion of the plaintiff from activities because of his marital status. (8)

Closer to home, and more recently, a federal district court in Tennessee applied the "compelling state interest" test to exclusion of married students from student activities. The court found a violation of both equal protection and due process. The court further stated that any infringement on the fundamental right to marry is subject to close judicial scrutiny. (9)

In 1972 the National School Public Relations Association reported the following:

> In a recent Iowa case, a 17-year old former all-state forward won her right to rejoin the Ruthven High School girls' basketball team, although she had married and had a baby and thus was ineligible according to the rules of the state Girls High School Athletic Union. Mrs. Jane Rubel and her 19-year-old husband dropped their $125,000 damage suit against the Athletic Union after the Ruthven Board of Education bowed to a federal judge's temporary restraining order immediately reinstating her on the team. Their suit contended that the rule discriminated unconstitutionally against Mrs. Rubel, while not imposing similar restrictions on women having "an even greater degree of sexual sophistication or experience." (10)

Recommendations of Other Agencies

New York State Department of Education. The New York State Department of Education made the following recommendation

to schools in that state:

> The opportunity to participate in all the activities of the school must not be restricted or denied solely because of marriage, pregnancy, or parenthood. . . .If a student so desires, she may return to the school she previously attended after the birth of her child.
>
> Students should have access to counselors who are qualified to provide objective information to students concerning pregnancy and marriage, and schools should make every effort to provide programs and services appropriate to the special needs of pregnant girls. (11)

American Civil Liberties Union. The American Civil Liberties Union made the following recommendation on school girl pregnancy:

> The right to an education provided for all students by law should not be abrogated for a particular student because of marriage or pregnancy unless there is compeling evidence that his or her presence in the classroom or school does, in fact, disrupt or impair the educational process for other students. This includes the right to participate in all the activities of the school. If temporary or permanent separation from the school should be warranted, the education provided elsewhere should qualitatively and quantitatively equivalent to that of the regular school, so far as is practicable. (12)

Recommendations

On the basis of the information presented in this paper, it is recommended that:

1. The regulations of the state department of education or the laws of the State of Mississippi be such that boards of education and school administrators are prohibited from excluding any student from school solely on the basis of pregnancy.

2. No pregnant student be deprived of participation in any school activity or organization except on recommendation of a physician for reasons of health and safety.

3. School districts be encouraged and provided with the means to establish special programs for students in advanced states of pregnancy and immediately after childbirth, or authorized to cooperate with other agencies in the education of these students, such that the students are able to re-enter the regular educational program without disadvantage at the earliest possible time.

4. Where it is not feasible to establish special programs for such students, they be permitted to continue in school in a modified program jointly determined by the student, her parents and/or husband, appropriate school personnel, and her physician.

NOTES

(1) Laurence W. Knowles, "High Schools, Marriage, and the Fourteenth Amendment," Journal of Family Law. 11:711 (1972).

(2) Mississippi Code Annotated 1942, § 6282-24 (Supp. 1972).

(3) Idaho Code Annotated 1947, §33-2006 (Cum. Supp. 1973).

(4) National School Public Relations Association, Schoolgirl Pregnancy. Washington, D.C.: The Association, 1972, p. 17.

(5) Ibid.

(6) See John P. Price, "Marriage v Education: A Constitutional Conflict," 44 Mississippi Law Journal 248 (1973), for an extended discussion of these and similar points.

(7) Mitchell v Louisiana High School Athletic Association, 430 F. 2d 1155, 1158 (5th Cir. 1970).

(8) Wellsand v Valparaiso Community Schools Corporation, No. 71 H 122 (2) (N.D. Ind., September 1, 1971).

(9) Holt v Shelton, 341 F. Supp. 821 (M.D. Tenn. 1972).

(10) National School Public Relations Association, Student Rights and Responsibilities. Washington, D.C.: The Association, 1972. p. 36.

(11) State Education Department, Guidelines for Students' Rights and Responsibilities. Albany, N.Y.: The Department, n.d. p. 25.

(12) American Civil Liberties Union, Academic Freedom in the Secondary Schools. New York: American Civil Liberties Union, 1968. p. 20.